

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

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4	ePLUS, INC.,	:	
5		:	
6	Plaintiff,	:	
7	v.	:	Civil Action
8		:	No. 3:09CV620
9	LAWSON SOFTWARE, INC.,	:	
10		:	September 24, 2010
11	Defendant.	:	
12	---	:	

COMPLETE TRANSCRIPT OF CONFERENCE CALL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES: (All via telephone)

Scott L. Robertson, Esq.  
Jennifer A. Albert, Esq.  
GOODWIN PROCTOR  
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DIANE J. DAFFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

1 APPEARANCES: (Continuing)

2

3 Dabney J. Carr, IV, Esq.  
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1           (The proceedings in this matter commenced at  
2 11:00 a.m.)

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4           THE COURT: Hello.

5           MR. MERRITT: Judge, good morning.

6           THE COURT: Good morning.

7           MR. MERRITT: This is your ePlus call. Craig  
8 Merritt and Henry Willett are on in Richmond for  
9 ePlus. And Scott Robertson and Jennifer Albert have  
10 jumped on from Goodwin Proctor in D.C.

11          THE COURT: All right.

12          MR. CARR: This is Dabney Carr, and I'm here  
13 for Lawson Software, and no one else.

14          THE COURT: All right. Gentlemen, I've  
15 learned from the Clerk's Office that ePlus plans to  
16 bring in here for the final pretrial conference 50  
17 boxes of documents times three, which is 150, and that  
18 Lawson plans to bring in 65 to 70. Conservatively,  
19 that's 20 to 22 boxes. That's a total of just single  
20 copy 70 boxes.

21          I've never seen a case in which it was  
22 necessary to have that many documents, and I think  
23 that reflects that you all haven't completed  
24 satisfactorily the process of narrowing the issues.  
25 And I think it's absurd to have that many documents as

1 exhibits. And I've never been in any case of any  
2 length where it was necessary to be put in more than  
3 about 100 to 150 exhibits.

4 And this case in this way as well as others  
5 is out of hand. So I'm going to impose limits on you  
6 if you can't straighten things out yourself.

7 Mr. Robertson, why do you need 50 boxes of  
8 documents?

9 MR. ROBERTSON: We don't, Your Honor.

10 THE COURT: Then don't use them.

11 MR. ROBERTSON: You've been sadly  
12 misinformed.

13 THE COURT: Well, that's what your legal  
14 assistant tells the clerk. And one of the reasons I  
15 have to deal with this is because if you-all are  
16 bringing in this volume of documents, you have to go  
17 through a special procedure because you can't come in  
18 the front door with all these.

19 MR. ROBERTSON: I spoke to my paralegal, who  
20 was not authorized to say that, and was inaccurate.  
21 In fact, I ran it down, and I think we're going to  
22 have a total, if we have four copies of all the  
23 documents that we need to bring in, it's going to be  
24 about 16 to 18 boxes, Your Honor.

25 So that paralegal was wrong. She should not

1 have communicated that to the clerk. I've had a  
2 discussion with her since then. It was just  
3 inaccurate, Your Honor, and I was very unhappy when I  
4 heard that, and I put an end to it right away.

5 An accurate assessment is 16 to 18 boxes,  
6 Your Honor. And I apologize to the Court for that  
7 inaccurate information that was conveyed.

8 MR. CARR: Judge, for Lawson from our end,  
9 it's a total for four sets of the 65 to 70, first of  
10 all, and what it is is four boxes will be Lawson's  
11 exhibits to which there has been an objection. The  
12 remainder of the boxes deal with, I think, six very  
13 large exhibits that ePlus has introduced to which we  
14 object, and part of that objection is because of the  
15 size of the exhibits.

16 MR. ROBERTSON: Your Honor, we now have  
17 outstanding only 13 objections to the entire Lawson  
18 exhibit list. Thirteen. So we've worked very hard to  
19 narrow down the objections that we have. That's where  
20 we stand.

21 MR. CARR: Each set of those exhibits is only  
22 in one box. So that's four boxes.

23 MR. ROBERTSON: If we could bring three sets,  
24 Your Honor, it would make the logistics a little bit  
25 more manageable.

1 THE COURT: The law clerk doesn't need a set  
2 of them. The law clerk can look at mine. I think you  
3 all can probably work out a way that each of you have  
4 your own copies of the other side's so you can talk  
5 about them. I understand that. And you need a copy  
6 for me to look at. So you-all work it out.

7 I still think with this volume of documents,  
8 it's a good idea to have them go to the loading dock.  
9 And you can call Mr. Neal, and he can tell you how to  
10 get there. It's on the 7th Street side. And you back  
11 your car up there, and then you can come right in,  
12 load it up, and come in the back way of the courthouse  
13 and go to the elevator and come up here. We'll have  
14 this in the conference room.

15 I was also looking at this case, and it  
16 occurs to me that a complicating factor, and it is the  
17 crossclaim of Lawson, why do we need to try that  
18 claim? Why can't we just sever it? An appropriate  
19 verdict form, collateral estoppel, will probably solve  
20 all the problems.

21 MR. CARR: Your Honor, this is Dabney Carr.  
22 It's the counterclaim of Lawson you're referring to?

23 THE COURT: Yes.

24 MR. CARR: That would be for invalidity?

25 THE COURT: Your counterclaims are

1 essentially the same as your defenses.

2 MR. CARR: Correct, yes.

3 THE COURT: And that's just a waste of time.  
4 It confuses the jury. It lades down the case with  
5 unnecessary verdict forms and unnecessary  
6 instructions. And I just am of the view since the  
7 counterclaims appear to me to be just the flip side of  
8 your defenses that they're going to be dealt with in  
9 the main verdict anyway.

10 So I think I'm going to sever the  
11 counterclaim, and you don't need to bring exhibits  
12 that are solely for the counterclaim. I'm sure that  
13 most of them are going to be brought anyway. So it's  
14 not going to cut down the number of exhibits, but it  
15 will make it easier for the jury.

16 What's wrong with that approach?

17 MR. CARR: Nothing, Your Honor. It makes  
18 sense.

19 THE COURT: All right. The counterclaim is  
20 hereby severed. As I said, I don't look at this as a  
21 way to cut down exhibits because it's the flip side  
22 issue.

23 MR. CARR: We'll take a look and see if there  
24 are any exhibits, but I agree with you. I don't think  
25 it's going to make a difference.

1           THE COURT: Then the other thing, you need to  
2 work hard on a verdict form. You-all have time to do  
3 that. So that you, in fact, have the results that you  
4 can use to collaterally estop or res judicata, use  
5 either one of those doctrines, based on the main  
6 verdict.

7           All right. Let's see. What time are we set  
8 to start on the 27th?

9           THE CLERK: At 10 o'clock, Your Honor.

10          MR. ROBERTSON: 9:30, I believe, Your Honor.

11          MR. CARR: This is Mr. Carr. I had 10  
12 o'clock on my calendar.

13          THE COURT: It's 10 o'clock.

14          All right. What else is outstanding other  
15 than the final pretrial conference right now? Is  
16 there anything else outstanding?

17          MR. ROBERTSON: No, Your Honor.

18          MR. CARR: This is Mr. Carr. I don't know of  
19 anything else.

20          THE COURT: I will expect you-all to be  
21 prepared to let me know the number of trial days now  
22 that you have gotten this process straightened out.  
23 And what have you done about the deposition  
24 designations?

25          MR. ROBERTSON: This is Mr. Robertson, Your



1 Honor.

2 I think we have them down to a bare minimum.

3 THE COURT: Well, (a) --

4 MR. ROBERTSON: I can't imagine there would  
5 be more than perhaps for both sides three hours total  
6 deposition testimony for about six different witnesses  
7 or so.

8 THE COURT: Are any of those witnesses people  
9 who can come here and testify live?

10 MR. ROBERTSON: No, sir.

11 THE COURT: So they are all third parties out  
12 of the jurisdiction of the Court?

13 MR. ROBERTSON: Yes, sir.

14 THE COURT: There's not much you can do about  
15 that.

16 All right. We'll see what we have then. Is  
17 there anything else that you all need to talk about?

18 MR. CARR: No, Your Honor. This is Dabney  
19 Carr. Nothing that I know of.

20 MR. ROBERTSON: Not from the ePlus side, Your  
21 Honor. We have with talking daily and continue to  
22 talk and will continue to talk even after the final  
23 pretrial to try and narrow the issues for the Court.

24 THE COURT: All right. You don't need to  
25 narrow them for me. Narrow them for yourself and for

1 the jury. The jury is the one that has got to decide  
2 this case. And the way that all of you are  
3 approaching it is a way that's reasonably calculated  
4 to confuse the jury rather than help them get to the  
5 bottom line.

6 All right. I think that's all I have. Does  
7 anybody else have anything else?

8 Okay. Thank you. We'll start at 10 o'clock  
9 on Monday. And you call Mr. Neal and get instructions  
10 on how to get in that dock. And you will probably  
11 need to be here by about 9:00 to get through because  
12 you have to go through security there as well and then  
13 get them up here.

14 Have you got a dolly or something that you  
15 can put them in and bring them up the stairs? Okay.  
16 We're going to do this, I think, given the volume,  
17 we're going to have to do it in the courtroom. Please  
18 make sure you don't put any boxes or briefcases on the  
19 benches or the furniture.

20 Thank you very much.

21 MR. CARR: Your Honor, one more question to  
22 clarify. It sounds like we can just deliver one set  
23 to the Court, and then the parties can exchange the  
24 other two sets, but I guess we'll have to bring those  
25 to court, as well.

1 THE COURT: Yes, but you just bring them  
2 because I'm going to take them. Just bring them to  
3 court. I don't want them ahead of time. Just bring  
4 them and there will be a place for you to deliver  
5 them, and then I'm going to go through them one at a  
6 time.

7 Now, how many people are coming?

8 MR. CARR: Your Honor, from Lawson's side,  
9 this is Dabney Carr, I expect three including myself.

10 MR. ROBERTSON: Your Honor, this is  
11 Mr. Robertson from ePlus. There will be three  
12 attorneys from Goodwin Proctor, and I expect two from  
13 Christian & Barton.

14 THE COURT: Okay. Do you have computers you  
15 need to bring or anything such as that? Phones?

16 MR. ROBERTSON: Not on behalf of ePlus, Your  
17 Honor.

18 MR. CARR: Not on behalf of Lawson either.

19 THE COURT: All right. Well, that will take  
20 care of it. Thank you all very much.

21 MR. CARR: Okay.

22 THE COURT: Bye-bye.

23 (The proceedings were adjourned at 11:13  
24 a.m.)  
25

1 I, Diane J. Daffron, certify that the  
2 foregoing is a true and accurate transcription of my  
3 stenographic notes.

4 /s/

10-19-10

5 \_\_\_\_\_  
6 DIANE J. DAFFRON, RPR, CCR

\_\_\_\_\_  
DATE